

**Case Officer:** Samantha Taylor

**Applicant:** Churchill Retirement Living Limited

**Proposal:** Modification of Section 106 - Application CHN.205.94

**Ward:** Banbury Cross and Neithrop

**Councillors:** Cllr Hannah Banfield; Cllr Surinder Dhesi; Cllr Cassi Perry

**Reason for Referral:** Application affects Council's interest in land

**Expiry Date:** 3 February 2020

**Committee Date:** 12<sup>th</sup> March 2020

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## **1. APPLICATION SITE AND LOCALITY**

- 1.1. The application site is an existing long stay car park located on Compton Road, Banbury. There are 85 pay and display bays, and charges apply between 8am and 7pm with free parking after 7pm.
- 1.2. The site is adjacent the Oxford Canal Conservation Area to the north and east, and is within Flood Zone 2. The Castle Quay shopping centre lies to the south and development is underway to construct an extension to the shopping centre (known as Castle Quay 2). To the west is a garden centre and access to St Mary's Primary School, with housing to the north-west.

## **2. DESCRIPTION OF PROPOSED VARIATION**

- 2.1. The application seeks confirmation that the Local Planning Authority would not enforce an extant S106 planning obligation (dated 11 July 2003) that requires the Compton Road car park to remain in use as a public car park, to serve the town centre. The application is being processed as a formal request to vary the legal agreement, to remove this agreement.
- 2.2. The S106 agreement which concerns this site as well as a wider area of Banbury Town relates to the development of Castle Quay, and requires the retention of the Compton Road Car Park to be used as a public car park and managed by the Council. The variation sought would remove this requirement, so that the Car Park land could potentially be used for an alternative use. No alternative use is proposed as part of this application, and notwithstanding this, any proposal for a use alternate to car parking would require planning permission.

## **3. RELEVANT PLANNING HISTORY**

- 3.1. The following planning history is considered relevant to the current proposal:

94/00205/CHN– Planning permission was granted for redevelopment to form an extension of the Castle Shopping Centre and new covered shopping centre, together with the provision of a link road from Castle Street to the inner relief road, car parking, landscaping and ancillary facilities and the relocation of the bus station.

At the time, a legal agreement securing various obligations was made. This included the provision of 1400 public car parking spaces within the town centre, as shown on the appended plan. This included the provision of car parking on Compton Road, although it is noted not on the present site.

96/00923/F – Planning permission was granted for amendments to the above development, to include relocation of the bus station. Within the associated S106 agreement, some changes to the area of car parking to be provided were made, and the provision of disabled spaces were included.

In 1998, a supplemental S106 agreement was entered into, adding in additional parties to the S106 agreement, through Conditional Contract to allow the applicant to benefit from a 250 year lease.

In 2003, a further supplemental agreement was entered into and the amendments include reference to 'Parking Facilities'. Specifically in relation to this application, part 5(a) the agreement was varied to include the current Compton Road Car Park. The requirement is for the car park to retain not less than 85 spaces and the total number of spaces within the Town Centre was reduced from 1400 to not less than 1155 spaces. The location of the Compton Road Car Park is relocated under this agreement, from its original western Compton Road location adjoining the garden centre to the east side of the Road, in its current location.

#### **4. PRE-APPLICATION DISCUSSIONS**

4.1. The following pre-application discussions are relevant to this proposal:

16/00351/PREAPP – written advice issued 15<sup>th</sup> July 2019. Officers advised that the “the car parking provision on the site is providing a much-needed facility for the town centre during the construction and first implementation of the Castle Quay 2 development which is now underway.”

#### **5. RESPONSE TO PUBLICITY**

5.1. This application has been publicised by way of a site notice displayed near the site. The final date for comments was 20<sup>th</sup> February 2020, although comments received after this date and before finalising this report have also been taken into account.

5.2. One comment was raised by third parties and this is summarised as follows:

- Objection to the loss of the car park as the car park is convenient and well used, its loss would be of detriment to town centre users.

5.3. The comments received can be viewed in full on the Council's website via the online Planning Register.

#### **6. RESPONSE TO CONSULTATION**

6.1. Consultation on this application type is not required. No consultation responses have been received.

#### **7. RELEVANT PLANNING POLICY AND GUIDANCE**

7.1. Planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Whilst this application is not for planning permission, it relates to a S106 agreement that was entered into in connection with the grant of planning permission,

and was deemed necessary in order to make that development acceptable in planning terms.

- 7.2. The Cherwell Local Plan 2011-2031 - Part 1 was formally adopted by Cherwell District Council on 20th July 2015 and provides the strategic planning policy framework for the District to 2031. The Local Plan 2011-2031 – Part 1 replaced a number of the ‘saved’ policies of the adopted Cherwell Local Plan 1996 though many of its policies are retained and remain part of the development plan. The relevant planning policies of Cherwell District’s statutory Development Plan are set out below:

CHERWELL LOCAL PLAN 2011 - 2031 PART 1 (CLP 2031 Part 1)

- PSD1: Presumption in Favour of Sustainable Development
- SLE4: Improved Transport and Connections
- ESD15: The Character of the Built Environment
- BAN8: Bolton Rd Development Area
- INF1: Infrastructure

- 7.3. Other Material Planning Considerations

- National Planning Policy Framework (NPPF)
- Planning Practice Guidance (PPG)

- 7.4. The Planning Practice Guidance outlines that planning law allows for the renegotiation of an obligation. Where the obligation predates April 2010, an application may be made to the Local Planning Authority to change the obligation where it ‘no longer serves a useful purpose’ or would continue to serve a useful purpose in a modified way.

- 7.5. Therefore, the Authority must consider whether the obligation serves a useful purpose and whether the modification would continue to serve a useful purpose.

- 7.6. The NPPF, at Paragraph 56, states that: “planning obligations may be sought where they meet all of the following tests:

- Necessary to make the development acceptable in planning terms
- Directly related to the development
- Fairly and reasonably related in scale and kind to the development

## **8. APPRAISAL**

- 8.1. The key issues for consideration in this case are:

- Whether the obligation serves a useful purpose
- Whether the modification would continue to serve a useful purpose.

Whether the obligation serves a useful purpose

- 8.2. The obligation which is sought to be varied is the requirement for the retention of the Compton Road Car Park and its operation as a public car park managed by Cherwell District Council.

- 8.3. This obligation is secured at various clauses within the S106 agreement and supplemental agreements.

- 8.4. Clauses 12(a) and 12(b) of the original 1995 S106 agreement secure the parking facilities to be provided in accordance with the operating terms prior to the occupation of the original Castle Quay extension and the retention of these facilities for no other purpose whatsoever without the prior consent of the District Council.
- 8.5. Clause 5 of the 2003 supplemental agreement specifically secures the '*Compton Road Car Park containing not less than eighty-five (85) spaces on land owned by Raglan*'.
- 8.6. In addition Clause 7 of the 2003 supplemental agreement secures the retention and maintenance of the North Canal, South Canal; and Compton Road Car Parks in perpetuity, as delineated on the attached plan as car parks for the Castle Quay development.
- 8.7. It is noted, that other clauses may be required to be varied in order to secure the proposed modification.
- 8.8. The purpose of the obligation is to retain the Compton Road Car Park as a public car park to serve the needs of Banbury Town Centre. Whilst the applicant's case outlines that the existing spaces within Compton Road may not be required, the Authority has received recent complaints citing a lack of public car parking serving the town centre. In addition, during visits to the site by both the Planning and Parking teams, the car park has been full or close to capacity during the working week and standard opening hours of the town centre. As such, Officers consider that currently there remains demand and a need for the number of spaces provided at Compton Road and the usage of the car park.
- 8.9. In addition, the Town Centre is going through a period of change with no certainty over the future requirement for car parking. Policies contained within the Local Plan, such as Banbury 8 allocate areas for future development. Specifically, Banbury 8 allocates the Bolton Road Development Area of which the Bolton Road Car Park is included. This policy does not require the retention of the public car park, although envisages that car parking would be part of the mixed use redevelopment of the site (including 200 dwellings). The LPA has not received any applications for the site, however, the Local Plan allows for development up to 2031, and given the scale of development the policy allows for it is unlikely that much, if any of the public car park at Bolton Road would be retained, along with the increasing requirement for car parking to serve the site as well as Banbury Town Centre. Therefore, a loss of parking on other public sites within the town centre area may prejudice the ability of the Bolton Road Development Area to deliver the aspirations of the allocation.
- 8.10. Furthermore, Castle Quay 2 is currently under construction and is a large-scale development incorporating a mix of uses. Some assumptions were made when the application for Castle Quay 2 was determined in regards to the requirement for car parking. On the basis of the retention of the existing town centre car parks (where reasonable and not allocated/approved for redevelopment), some allowances were made for a reduction in the number of parking spaces to be delivered on site. The Compton Road Car Park was considered as part of the existing town centre parking provision, and lies in close proximity to the development. Until such a time as the Castle Quay 2 development is open and operational, and surveys of parking provision within the town centre are carried out during its operation, the Authority cannot conclude with any degree of certainty that the Compton Road Car Park would not be required to ensure sufficient town centre car parking capacity in the long term.
- 8.11. As outlined above, the Compton Road Car Park and its retention serves the purpose of ensuring an adequate supply of car parking for Banbury Town Centre. The car park contributes to the wider public parking provision in the Town Centre, and

supports the usage of the Town Centre facilities. In addition, the cumulative public parking provision is considered important to both the existing facilities and future developments either under construction or allocated, supporting the usage and growth of the Town Centre and its facilities. The Compton Road Car Park supports the local community and the growth of Banbury through the contribution it makes to the public car parking. Therefore, the obligation is considered to still meet the tests at Paragraph 56 of the NPPF and to meet the requirements of the PPG in serving a useful purpose, and the Authority is reasonable in retaining this obligation.

Whether the modification would continue to serve a useful purpose

- 8.12. The modification sought seeks to remove the requirement to retain the Compton Road Car Park as a public car park. Whilst it is acknowledged that agreeing to remove the obligation would facilitate potential future redevelopment of the site, weight cannot be applied to this consideration of any potential future development, which would need to be subject to separate assessment via a separate application for planning permission.
- 8.13. Consideration can only be given to the modification sought and the allowances. As outlined above, the usefulness of this obligation is the contribution the car park makes to the provision of public car parking and the support this provides for the usage of the Town Centre. In addition, the car park would contribute, albeit it modestly, to the growth of Banbury through the contribution to meeting the parking needs of future Town Centre developments.
- 8.14. The modification proposed would remove the requirement to retain the public car park. As such, Officers consider that this modification would fail to continue to serve a useful purpose as required by the Planning Practice Guidance, as the site would no longer be retained for public parking, therefore, the usefulness detailed above would fall away.
- 8.15. Therefore, the modification would fail to continue to serve a useful purpose.

**9. CONCLUSION**

- 9.1. For the reasons outlined above, Officers consider the obligation as secured in the S106 agreement and supplemental agreements continues to serve a useful planning purpose and meets the tests set out at Paragraph 56 of the NPPF, contributing to meeting the parking needs of the existing Town Centre and its future growth. This satisfies the PPG in demonstrating a need to retain the obligation and the reasonableness of the Authority in retaining this obligation.
- 9.2. The modification sought would remove the obligation and with it, the usefulness associated with the original obligation. This does not satisfy the PPG and therefore, Officers recommend the obligation is not varied.

## **10. RECOMMENDATION**

### **REFUSAL FOR THE REASONS SET OUT BELOW**

The obligation to retain the Compton Road Car Park continues to serve a useful and necessary purpose in supporting Banbury Town Centre and its future growth through the provision of adequate public car parking to serve the town centre facilities and local community. It therefore remains necessary to make development acceptable in planning terms, remains directly related to the Castle Quay development, and is fairly and reasonable related in scale and kind. As such, the modification fails to serve a useful purpose as outlined within the Planning Practice Guidance and is contrary to Policies SLE4, ESD15 and INF1 of the Cherwell Local Plan 2011-2031 Part 1 and Government guidance contained in the National Planning Policy Framework.

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